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No. 99-762

Supreme Court, U.S.
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In the Supreme Court of the United States

FELIX TORRES,
Petitioner

v.

JOHN MCLAUGHLIN AND JOHN SUNDERHAUF,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether imprisonment as the result of a criminal conviction amounts to a "seizure" of the prisoner's person within the meaning of the Fourth Amendment?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 6

The Court of Appeals' Decision Rests on Principles Which Have Long Been Established by this Court, and on Which There Is No Disagreement among the Courts of Appeals 6

A. It has long been settled that the Fourth Amendment's protections extend only to pre-trial deprivations of liberty 7

B. There is no conflict among the courts of appeals on this point 9

C. Neither *Heck* nor *Albright* changed these long-standing principles 10

CONCLUSION 11

TABLE OF AUTHORITIES

Cases **Page**

Albright v. Oliver,
510 U.S. 266 (1994) 7, 10, 11
Baker v. McCollan,
443 U.S. 137 (1979). 8
Beck v. Ohio,
379 U.S. 89 (1964) 7
Brady v. Dill,
187 F.3d 104 (1st Cir. 1999) 9
Brady v. Maryland,
373 U.S. 83 (1963) 8, 9
Gerstein v. Pugh,
420 U.S. 103 (1975) 7, 8
Graham v. Connor,
490 U.S. 386 (1989) 7
Gravely v. Madden,
142 F.3d 345 (6th Cir. 1998) 9
Heck v. Humphrey,
512 U.S. 477 (1994) 10
In re Winship,
397 U.S. 358 (1970) 8
Kerr v. Lyford,
171 F.3d 330 (5th Cir. 1999) 10
Mayberry v. Pennsylvania,
400 U.S. 455 (1971) 8
Mooney v. Holohan,
294 U.S. 103 (1935) 8
Spurlock v. Satterfield,
167 F.3d 995 (6th Cir. 1999) 9, 10
Taylor v. Meacham,
82 F.3d 1556 (10th Cir. 1996) 10

Terry v. Ohio,
398 U.S. 1 (1968) 7
Torres v. McLaughlin,
1996 WL 680274 (E.D. Pa., Nov. 21, 1996)
(*Torres I*) 1, 3
Torres v. McLaughlin,
966 F.Supp. 1353 (E.D. Pa. 1997)
(*Torres II*) 1, 2, 3, 4
Uboh v. Reno,
141 F.3d 1000 (11th Cir. 1998) 10
United States v. Crews,
445 U.S. 463 (1980) 7

Statutes and Rules

42 U.S.C. § 1983 3
Fed. R. Civ. Proc. 12(b)(6) 3
Pa. R. Crim. Proc. 140 2
Pa. R. Crim. Proc. 141 2

Constitutional Provisions

U.S. CONST., Amend. I 3
U.S. CONST., Amend. IV . . . . . *passim*
U.S. CONST., Amend. V 3
U.S. CONST., Amend. VI 8
U.S. CONST., Amend. XIV 3

OPINIONS BELOW

The Court of Appeals' opinion is reported at 163 F.3d 169 and is reprinted in the appendix to the petition ("Pet. App.") at 1. The District Court's opinion in support of the order appealed from is reported as *Torres v. McLaughlin*, 966 F.Supp. 1353 (E.D. Pa. 1997) ("*Torres II*"). The District Court also issued an earlier opinion in the case ("*Torres I*"), which is not officially reported but which is available on WestLaw at 1996 WL 680274. Neither of the District Court's opinions is reprinted in the appendix to the petition.

STATEMENT OF THE CASE

This is a civil rights action against a police officer and a supervisor, arising out of the prosecution and conviction of the petitioner on drug charges. The petitioner is Felix Torres. The respondents are John McLaughlin, a Philadelphia police officer assigned to the Pennsylvania Attorney General's Bureau of Narcotics Investigation Task Force; and John Sunderhauf, a Task Force supervisor. Pet. App. 2.

1. McLaughlin arrested the petitioner on June 2, 1994. McLaughlin claims that he saw the petitioner selling cocaine, but petitioner denies this, claiming that he was merely on his way to buy drugs. Pet. App. 3 & n.1. The next day, June 3, the Philadelphia District Attorney's office issued a criminal complaint charging petitioner with possession of cocaine with intent to deliver. Petitioner claims that, in making these charges, the prosecutor relied on false statements made by McLaughlin. Pet. App. 3-4 & n.2.

That same day, June 3, the petitioner was released from custody when, at a preliminary arraignment,[1] he signed a bond to appear and answer the charges against him. Pet. App. 4. Petitioner was not required to post any money for bail, and his bond did not impose any travel restrictions or periodic reporting requirements upon him. *Torres II*, 966 F.Supp. at 1358, 1364. He appeared for a preliminary hearing on June 10, 1994, and for a pre-trial hearing on April 13, 1995, *id.* at 1358, but his status remained unchanged. Petitioner remained free until he was convicted by a jury in September of 1995, when he was immediately taken into custody. Pet. App. 4; *Torres II*, 966 F.Supp. at 1358. He was later sentenced to serve a term of three to six years in prison, and to pay a fine of $10,000. Pet. App. 4.

In May of 1996, petitioner moved for a new trial. The District Attorney's office did not oppose the motion, and informed the court that, if petitioner's motion were granted, it intended to drop the charges against him.[2] The court granted both the motion for a new trial and the motion for a *nolle prosequi*.

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[1]Both the District Court and the Court of Appeals incorrectly refer to this proceeding as a "preliminary hearing." Pet. App. 4; *Torres II*, 966 F.Supp. at 1364. *Cf.* Pa. R. Crim. Proc. 140 (preliminary arraignment) *with* Pa. R. Crim. Proc. 141 (preliminary hearing). Petitioner's preliminary *arraignment* occurred on June 3; his preliminary *hearing* occurred on June 10. *Torres II*, 966 F.Supp. at 1358.

[2]The First Assistant District Attorney later explained, in an unrelated proceeding, that his office had taken this action in petitioner's case because McLaughlin was an essential witness in the case against the petitioner, and the District Attorney's office had "information which one could characterize as indicating that ... McLaughlin may have lied in a search warrant" in another unrelated case. Pet. App. 4; *Torres II*, 966 F.Supp. at 1366-67.

Petitioner was released on May 13, 1996, having served about seven and a half months. Pet. App. 4; *Torres II*, 966 F.Supp. at 1366 & n.13.

2. Petitioner filed this action for damages against McLaughlin and his supervisor pursuant to 42 U.S.C. § 1983, alleging malicious prosecution, and claiming violations of his rights under the First, Fourth, Fifth and Fourteenth Amendments to the Constitution; he also made a variety of claims under state law. The respondents moved to dismiss the complaint under Fed. R. Civ. Proc. 12(b)(6), and the District Court granted their motion in large part. *See Torres I.*

The District Court first dismissed all claims except those arising under the Fourth Amendment, and those claims are not now before the Court. *Torres I* at *2 n.1 & *9-11. The District Court then analyzed petitioner's Fourth Amendment claim in terms of the "three restraints on [petitioner's] personal liberty that may ... rise to the level of a constitutional violation": his arrest on June 2, 1994; his status after his release from arrest and before his conviction; and his post-conviction incarceration. *Id.* at *4. The District Court held that the claim arising out of petitioner's arrest was barred by the statute of limitations, *id.* at *4-5, and that claim too is not before the Court. The District Court held, however, that petitioner's remaining claims could state a cause of action, and allowed him to amend his complaint. *Id.* at *5-6.

After petitioner did so, the respondents moved for summary judgment on the petitioner's remaining claims, on the ground of qualified immunity. In disposing of this motion, the District Court focused almost exclusively on the issue presented by petitioner's status *before* his conviction, that is, "whether [petitioner] has a Fourth Amendment malicious prosecution

claim based on the 'restraints' he claims to have suffered while his criminal prosecution was pending." *Torres II*, 966 F.Supp. at 1358. After a lengthy analysis, the District Court concluded that the only restraints which petitioner had suffered during this period — "[h]aving to appear in state court for his preliminary hearings, arraignment and trial" — were not "constitutionally significant" and thus could not serve as "the factual predicate for his malicious prosecution claim." *Id.* at 1364. At the very least, the lower federal courts had received "little [or] no clear guidance" on this issue, *ibid*, thus precluding any holding that the law was clearly established in petitioner's favor for immunity purposes.

Nevertheless, the District Court denied the respondents' motion. He held, without discussion, that petitioner's imprisonment *after* his conviction was "certainly a cognizable deprivation of liberty under the Fourth Amendment that can serve as the basis for [petitioner's] § 1983 malicious prosecution claim," *id.* at 1364, and that petitioner had presented sufficient evidence on this claim to defeat the motion for summary judgment. *Id.* at 1364-73. Respondents appealed the denial of qualified immunity.

3. In the Court of Appeals, petitioner did not rely on the non-Fourth Amendment claims which the District Court had dismissed; to the contrary, "[petitioner] now insists that his sole claim is under the Fourth Amendment ... a claim based on McLaughlin's role in initiating the prosecution by conveying false information to the prosecutor." Pet. App. 7. Moreover, petitioner did not attempt in the Court of Appeals to predicate his Fourth Amendment claim on the restrictions placed on him *before* his conviction; rather, "[petitioner's] Fourth Amendment claim concerns 'his unconstitutional confinement' *beginning with his conviction....*" Pet. App. 11 (emphasis added). "Hence,

the only remaining issue is whether [petitioner's] post-conviction incarceration was a Fourth Amendment seizure." *Ibid.* The Court of Appeals held that it was not, and therefore reversed the District Court's judgment.

Although petitioner had "insisted" that his "sole claim" arose under the Fourth Amendment, Pet. App. 7, the Court of Appeals, without explanation, began its analysis by examining whether malicious prosecution claims can arise under *other* provisions of the Constitution. Pet. App. 6-11. Having concluded, in what is obviously *dicta*, that they can, the Court of Appeals then turned to the "only ... issue," Pet. App. 11, actually presented by the case: whether imprisonment pursuant to a criminal conviction is a "seizure" within the meaning of the Fourth Amendment. Pet. App. 11-14.

The Court of Appeals first observed that none of its own decisions, and no decision of this Court, suggest that Fourth Amendment protections extend to post-conviction imprisonment; to the contrary, "the Framers of the Constitution drafted the Fourth Amendment to quell *pre-trial* deprivations of liberty." Pet. App. 12 (emphasis in original). Turning to the decisions of other courts, the Court of Appeals noted that, while the precise point at which Fourth Amendment protections end is a subject of some debate among the courts of appeals, that debate "relate[s] to the boundary between arrest and pre-trial detention." Pet. App. 12-13 (citing cases). Even those courts which have taken a relatively expansive view of the Fourth Amendment have declined to extend its protections beyond the pre-trial detention stage, and no court has extended them to post-conviction imprisonment. *Ibid.* "At most, there may be some circumstances during pre-trial detention that implicate Fourth Amendment rights." Pet. App. 13.

The Court of Appeals thus concluded that "post-conviction incarceration cannot be a seizure within the meaning of the Fourth Amendment, and [petitioner's] incarceration did not violate his Fourth Amendment rights." Pet. App. 13-14. Having held that petitioner had not alleged a violation of his Fourth Amendment rights, the Court of Appeals did not reach the question of whether those rights were "clearly established" for purposes of qualified immunity. Pet. App. 14.

Senior District Judge Debevoise, sitting by designation, dissented. First, in his view, "post trial imprisonment constitutes a seizure" within the meaning of the Fourth Amendment. Pet. App. 14, 19-21. Second, even if this were not so, the pretrial restrictions on petitioner were severe enough to constitute such a seizure. Pet. App. 21-26. Third, he agreed with the majority's observation in *dicta* that malicious prosecution claims can arise under constitutional provisions other than the Fourth Amendment. Pet. App. 27. Finally, he would have held that the right to be free from malicious prosecution was "clearly established," thus defeating respondents' claim of qualified immunity. Pet. App. 27-36.

REASONS FOR DENYING THE WRIT

The Court of Appeals' Decision Rests on Principles Which Have Long Been Established by this Court, and on Which There Is No Disagreement among the Courts of Appeals.

The petitioner suggests that this case would permit the Court to clarify "the extent to which a claim of malicious prosecution gives rise to a federal cause of action and ... its constitutional source." Pet. 9 (internal quotation marks omitted). However, as the petitioner himself elsewhere recognizes, this case presents no broad issues relating to malicious prosecution

claims, but only a single, narrow issue. *See* Pet. 2 ("[t]his case presents a single clear cut issue"). That issue, as the Court of Appeals described it, is "whether [petitioner's] post-conviction incarceration was a Fourth Amendment seizure." Pet. App. 11. Put another way, the issue is whether the Fourth Amendment is violated when a prosecution is commenced on the basis of allegedly false information and a sentence of imprisonment ensues. Contrary to the petitioner's suggestion, this narrow issue is marked by neither confusion nor disagreement among the lower courts, and the Court of Appeals correctly resolved it by following a path already well-marked by this Court's decisions.

A. It has long been settled that the Fourth Amendment's protections extend only to pre-trial deprivations of liberty.

It scarcely needs saying that the Fourth Amendment's prohibition against "unreasonable ... seizures" of persons is designed to address *pretrial* deprivations of liberty. *Albright v. Oliver*, 510 U.S. 266, 274 (1994) (plurality opinion). *See, e.g., Graham v. Connor*, 490 U.S. 386 (1989) (Fourth Amendment governs use of force during arrest); *Gerstein v. Pugh*, 420 U.S. 103 (1975) (pretrial detention); *Terry v. Ohio*, 398 U.S. 1 (1968) (stop-and-frisk); *Beck v. Ohio*, 379 U.S. 89 (1964) (arrest).

But once past these initial stages of the criminal process, the Fourth Amendment has never been thought to provide any check against arbitrary imprisonment. Thus, the initiation of a criminal prosecution need not be supported by probable cause, *Gerstein v. Pugh*, 420 U.S. at 125 n.26; and an arrest or detention without probable cause "does not void a subsequent conviction." *Id.* at 119; *United States v. Crews*, 445 U.S. 463, 473 (1980). Rather, the Fourth Amendment's guarantee against unreasonable seizures is best understood as "a threshold right ... only the first

stage of an elaborate system ... designed to safeguard the rights of those accused of criminal conduct." *Id.* at 125, n.27.

Protection against arbitrary imprisonment at later stages of the process comes, not from the Fourth Amendment, but from other sources, for example the Sixth Amendment's speedy trial clause:

> Obviously, one ... could not be detained indefinitely ... even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment. For the Constitution likewise guarantees an accused the right to a speedy trial....

Baker v. McCollan, 443 U.S. 137, 144 (1979). Beyond this, protections against arbitrary convictions flow from the other specific guarantees of the Sixth Amendment — public trial, confrontation of witnesses, compulsory process, assistance of counsel — and from the general guarantee of a fair trial which inheres in the notion of procedural due process. *See, e.g., Mayberry v. Pennsylvania*, 400 U.S. 455, 465-66 (1971) (biased judge violates due process); *In re Winship*, 397 U.S. 358, 362 (1970) (procedural due process requires government to prove each element of a criminal case beyond a reasonable doubt); *Brady v. Maryland*, 373 U.S. 83, 86-87 (1963) (suppression of exculpatory evidence violates due process); *Mooney v. Holohan*, 294 U.S. 103, 112 (1935) (knowing use of false testimony violates due process).

B. There is no conflict among the courts of appeals on this point.

Given this settled body of law, it should come as no surprise that the Court of Appeals rejected petitioner's novel reading of the Fourth Amendment. Nor is there disagreement on this point among the lower courts. While there is, as the Court of Appeals pointed out, some debate about the *exact* limits of Fourth Amendment protections, at least seven other courts of appeals — all of those which have considered the issue — agree with the Third Circuit that those protections stop well short of the criminal trial itself. Pet. App. 12-13 (collecting cases from five circuits); *see Brady v. Dill*, 187 F.3d 104, 110-11 (1st Cir. 1999) ("once an arrest pursuant to a facially valid warrant supported by probable cause has been completed, a detainee's protections from unlawful custody no longer repose in the Fourth Amendment"); *Gravely v. Madden*, 142 F.3d 345, 348 (6th Cir. 1998) (when a prisoner escapes, the Fourth Amendment "is not triggered anew by attempts at recapture because the convict has already been 'seized,' tried, convicted, and incarcerated").

Petitioner says, Pet. 7-8, that the holding in this case conflicts with the Sixth Circuit's decision in *Spurlock v. Satterfield*, 167 F.3d 995 (6th Cir. 1999), but he is mistaken. *Spurlock* did not hold that post-conviction imprisonment is a "seizure" within the meaning of the Fourth Amendment, and indeed did not even discuss this issue. The claim in *Spurlock* involved both pre-trial arrest and detention and post-trial imprisonment, but the Court of Appeals focused mostly on pre-trial events. *Id.* at 1006-07 ("The injuries ... occurred much earlier than [trial].") Moreover, the court alluded to several possible theories of recovery — *Brady v. Maryland* violations; the use of perjured testimony as a procedural due process violation; and the Fourth Amendment — without any precise

analysis of how these theories related to the various actions of the defendants or the various injuries to the plaintiff. *See* 167 F.3d at 1005-06. *Spurlock* thus cannot bear the weight which petitioner seeks to put on it.

Petitioner calls *Spurlock* an "example" of conflict among the circuits, Pet. 7, but he offers no others. The other circuit cases he cites all involve plaintiffs whose criminal charges were dismissed before trial; in none of those cases was the issue of post-conviction imprisonment as a Fourth Amendment violation even mentioned, let alone decided. *See Kerr v. Lyford*, 171 F.3d 330, 336 (5th Cir. 1999); *Uboh v. Reno*, 141 F.3d 1000, 1001 (11th Cir. 1998); *Taylor v. Meacham*, 82 F.3d 1556, 1558 (10th Cir. 1996). The circuit conflict which petitioner posits simply does not exist.

C. Neither *Heck* nor *Albright* changed these long-standing principles.

Finally, petitioner claims that the Court of Appeals' decision is inconsistent with this Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994). Pet. 5. He is again mistaken. Neither *Heck* nor *Albright v. Oliver, supra*, altered the long-settled body of law described above. *Supra* at 7-8.

Heck held only that a civil rights action may not be used to challenge the constitutionality of a conviction. 512 U.S. at 478, 486-87. The Court held in *Heck* that a "cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated," *id.* at 489-90, but did not hold, or even intimate, that such a cause of action should be based on the Fourth Amendment. *Albright*, for its part, held — unsurprisingly — that a civil action premised on an invalid *arrest* must be

analyzed under the Fourth Amendment, 510 U.S. at 274-75, but said nothing about the proper constitutional analysis of an invalid *conviction*. The Court of Appeals' decision is thus entirely in accord with this Court's cases.

CONCLUSION

The Court should deny the petition.

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